

**Senate Judiciary Committee Amendment # 1, as amended by 1 & 2**

**Amendment No. 1 to SB2001**

**Beavers  
Signature of Sponsor**

**FILED**

Date \_\_\_\_\_

Time \_\_\_\_\_

Clerk \_\_\_\_\_

Comm. Amdt. \_\_\_\_\_

**AMEND Senate Bill No. 2001\***

**House Bill No. 1993**

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 29, Chapter 26, Part 1, is amended by adding the following new, appropriately designated sections:

Section 29-26-121.

(a) Any person, or that person's authorized agent, asserting a claim for medical negligence shall give written notice of such claim by certified mail, return receipt requested, to each physician or health care provider against whom such claim is being made at least sixty (60) days before the filing of a complaint based upon medical negligence in any court of this state. Attached to such written notice shall be a list of all physicians and health care providers to whom notice is being given pursuant to this subsection.

(b) If a complaint is subsequently filed in any court, the pleadings shall state that each party has fully complied with the provisions of this section and shall provide such evidence thereof as the court may require to determine if the provisions of this section have been met.

(c) If notice is given as provided in this section, it shall toll the applicable statute of limitations to and including a period of ninety (90) days following the date of the giving of the notice, and this tolling shall apply to all parties and potential parties.

(d) All parties in an action covered by this section shall be entitled to obtain complete and unaltered copies of the claimant's medical records from any other party within thirty (30) days from the date of receipt of a written request for such records. However, the receipt of a medical authorization executed by the claimant shall be considered compliance by the claimant with this section.

(e) Notwithstanding any other provision of law, for the purposes of this section, a request for the medical records of a deceased person or a person who is incompetent shall be deemed to be valid if accompanied by an authorization signed by a parent, spouse, or adult child of the deceased or incompetent person. If the deceased or incompetent person does not have a parent, spouse, or adult child, the executor of a deceased person or guardian of an incompetent person may request such medical records.

Section 29-26-122.

(a) Within ninety (90) days after filing a complaint in any medical negligence action in which expert testimony on the issue of negligence or causation is required, the plaintiff or plaintiff's counsel must file a Certificate of Good Faith stating that:

(1) The plaintiff or plaintiff's counsel has consulted with one (1) or more medical experts and the expert or experts consulted has provided a signed written statement confirming that they:

(A) Are competent under Tennessee law to express opinion(s) in the case on negligence and causation; and

(B) Believe, based on the information available from the medical records concerning the care and treatment of the plaintiff for the incident(s) at issue and, as appropriate, information from the plaintiff or others with knowledge of the incident(s) at issue, that there is a good faith basis to maintain the action as to each defendant on the issues of negligence and causation; or

(2) The plaintiff or plaintiff's counsel has consulted with one (1) or more medical experts and the expert or experts consulted has provided a signed written statement confirming that they:

(A) Are competent under Tennessee law to express opinion(s) in the case on negligence and causation; and

(B) Believe, based on the information available from the medical records concerning the care and treatment of the plaintiff for the incident(s) at issue and, as appropriate, information from the plaintiff or others with knowledge of the incident(s) at issue, that there are facts material to the resolution of the case that cannot be reasonably ascertained from the medical records or information reasonably available to the plaintiff or plaintiff's counsel; and that despite the absence of this information there is a good faith basis for maintaining the action as to each defendant on the issues of negligence and causation.

(b) Within thirty (30) days after a defendant has alleged in an answer or amended answer that a health care provider other than a health care provider named in the complaint or amended complaint caused or contributed to cause the injuries or death of the plaintiff and expert testimony on the issue of negligence or causation is required to prove the fault of the other health care provider, each defendant or defendant's counsel must file a Certificate of Good Faith stating that:

(1) The defendant or defendant's counsel has consulted with one (1) or more medical experts, which may include the defendant filing the Certificate, and the expert or experts consulted has provided a signed written statement confirming that they:

(A) Are competent under Tennessee law to express opinion(s) in the case; and

(B) Believe, based on the information available from the medical records concerning the care and treatment of the plaintiff for the incident(s) at issue and, as appropriate, others with knowledge of the incident(s) at issue, that that there is a good faith basis to allege fault against each non-party health care provider

identified by any defendant on the issues of negligence and causation, unless it is asserted that the provider was only a cause in fact of the harm in which event the certification need address only causation; or

(2) The defendant or defendant's counsel has consulted with one or more medical experts, which may include the defendant filing the Certificate of Good Faith, and the expert or experts consulted has provided a signed written statement confirming that they:

(A) Are competent under Tennessee law to express opinion(s) in the case; and

(B) Believe, based on the information available from the medical records concerning the care and treatment of the plaintiff for the incident(s) at issue and, as appropriate, information from others with knowledge of the incident(s) at issue, that there are facts material to the resolution of the case that cannot be reasonably ascertained from the medical records or information reasonably available to the defendant or defendant's counsel; and that despite the absence of this information there is a good faith basis for alleging fault against each non-party health care provider identified by any defendant on the issues of negligence and causation, unless it is asserted that the provider was only a cause in fact of the harm in which event the certification need address only causation.

(c) The failure of a plaintiff to file a Certificate of Good Faith in compliance with this section shall, upon motion, make the action subject to dismissal with prejudice. The failure of a defendant to file a Certificate of Good Faith in compliance with this section alleging the fault of another health care provider, other than a health care provider named in the complaint or amended

complaint, shall, upon motion, make the allegations against the other health care provider subject to being stricken with prejudice unless the plaintiff consents to waive compliance with this section. If such allegations are stricken, no defendant, except for a defendant who complied with this section, can assert, and neither shall the judge nor jury consider, the fault, if any, of the subject health care provider. The court may, upon motion, grant an extension within which to file a Certificate of Good Faith if the court determines that a health care provider who has medical records relevant to the issues in the case has failed to timely produce medical records upon timely request or for other good cause shown.

(d)

(1) If a party in a medical negligence action subject to this section prevails on the basis of the failure of the alleging party to offer competent expert testimony on causation or negligence, the party, or the court on its own motion, may compel the alleging party or party's counsel to disclose the name or names of medical experts relied upon in executing the Certificate of Good Faith required by this section and to provide such evidence as the court may require to determine if the provisions of this section have been met. Such medical experts may be compelled to provide testimony under oath, through deposition or otherwise, for the purposes of determining compliance by a party or party's counsel with this section.

(2) If the court, after hearing, determines that this section has been violated, the court shall award appropriate sanctions against the attorney if the attorney was a signatory to the action and against the plaintiff if the plaintiff was proceeding pro se. The sanctions may include, but are not limited to, payment of some or all of the attorney's fees and costs incurred by a party in defending the claim or defense supported by the non-complying Certificate of Good Faith. If the signatory was an

attorney, the court shall forward the order to the Tennessee board of professional responsibility for appropriate action. Upon proof that a party or party's counsel has been determined to have filed a Certificate of Good Faith in violation of this section in three (3) or more cases in any court of record in Tennessee, the court shall, upon motion, require the party or party's counsel to post a bond in the amount of ten thousand dollars (\$10,000) per adverse party in any future medical negligence case to secure payment of sanctions for any violation of this section in such case.

(3) A Certificate of Good Faith shall disclose the number of prior violations of this section by the executing party.

(4) The administrative office of the courts shall develop a form Certificate of Good Faith to effectuate the purposes of this section.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. For purposes of the administrative office of the courts developing a form Certificate of Good Faith, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2007, the public welfare requiring it.